IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12697 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUNICIPAL COMMISSIONER

Versus

K N PALANIYA NAKA CLERK

Appearance:

1. Special Civil Application No. 12697 of 1993

MR JR NANAVATI for Petitioner No. 1

MR YV SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. J.R.Nanavaty for the petitioner and Mr.Y.V. Shah,l earned advocate for the

respondent workman. By way of this petition under Article 227 of the Constitution of India, the petitioner corporation has challenged the award made by the Industrial Tribunal, Bhavnagar in Reference (IT) NO. 167 of 1991 (Old No. 172 of 1987) dated 1st May, 1993 wherein the Industrial Tribunal has set aside the order of punishment dated 26.9.1986 and has further directed to treat the period of suspension as a period on duty for all purposes and necessary payments as a consequence thereof are required to be made by the petitioner corporation to the respondent workman within the period of thirty days from the date of publication of the award. This petition was admitted by this court by issuing rule thereon and ad.interim relief in terms of para 7(B) of the petition was granted by this court on 19th January, 1994.

During the course of hearing, it was submitted by the learned advocate Mr. Nanavaty for the petitioner that the tribunal has committed gross error in coming to the conclusion that the charge levelled against the workman concerned is not established. It was also submitted by him that the charge sheet, order of suspension and the show cause notice in original were signed by the competent authority means the Commissioner of the Corporation but in communication, subordinate officer has signed. According to him, it does not render the charge sheet and the show cause notice as well as the suspension illegal or without jurisdiction. He also submitted that the tribunal has committed gross error in coming to the conclusion that the competent authority Commissioner has not signed the charge sheet, show cause notice and the punishment order. He also submitted that the tribunal has committed gross error in reappreciating the evidence led in the departmental inquiry. He also submitted that the tribunal has no jurisdiction to reappreciate the evidence and to come to a different conclusion from the departmental authority. Therefore, according to him, the tribunal has committed gross error in making the award in question in favour of the workman and, therefore, interference of this court is necessary.

On the other hand, learned advocate Mr. Y.V. Shah appearing for the respondent workman has submitted that the tribunal was right in appreciating the evidence on record and has rightly considered the documents produced by the parties. He also submitted that the tribunal is having power and jurisdiction under section 11A of the ID Act, 1947 to reappreciate the oral and documentary evidence one led in the departmental inquiry. He also submitted that the tribunal is having powers

under section 11A of the ID Act,1947 to come to its own conclusion or to defer from the findings given and the conclusions drawn by the departmental authority in the departmental proceedigns.According to his submission, the tribunal has rightly exercised such powers under section 11A of the ID Act, 1947 and, therefore, there is no scope of interference with such findings given by the tribunal in exercise of the powers under sec.11 A of the ID Act, 1947. He also submitted that the tribunal has, after considering the merits of the matter, recorded its findings and the award is based on such findings. As regards the facts of the case, it was submitted by the learned advocate Mr. Shah that the respondent workman was late by about one and half hour in resuming the duty because of the compelling circumstances and the explanation in that regard was submitted by the workman before the authority of the respondent but the same has not been taken into account and for such a minor lapse, the respondent workman has been placed under suspension by the corporation and ultimately, order of punishment has been passed against the respondent workman. It was submitted that the reason for his becoming late in resuming the duty on that unfortunate day was the puncture in his bicycle and in his entire service career, there was not a single incident but without considering his past, such a harsh order of punishment has been passed and the tribunal was justified in declaring such an order of punishment as unjust and harsh and has rightly interfered with the same.

Without prejudice to the aforesaid contentions, it was also submitted by the learned advocate Mr. Shah on behalf of the workman that the award in question has been fully implemented by the petitioner corporation in favour of the respondent workman by order dated 22nd July, 1993, prior to the filing of the present petition. He has shown the order 22nd July, 1993. Same is ordered to be taken on record. It was also submitted by him that after implementing the award in question in favour of the petitioner without any rider that such implementation shall be subject to the challenge that may be made by the petitioner before the higher forum, the petitioner filed the present petition before this court on 7th October, 1993 wherein this court has issued rule and granted stay against implementation of the award on 9th January, 1994. He, therefore, submitted that once the award has been implemented without any aforesaid rider, the petition itself is not maintainable and the interim stay against execution has also no meaning.

I have considered the submissions made by the

learned advocates for the parties. I have perused the award in question made by the learned Tribunal. Before the tribunal, statement of claim was filed by the respondent at Exh. 2 and reply thereto was filed by the petitioner corporation at Exh. 3. Before the tribunal,the workman was examined at Exh. 7 and certain documents were produced at Exh.8 to 24 on behalf of the union. Before the tribunal, on behalf of the petitioner corporation, one witness IJ Patel was examined at Exh. 28 and another witness RJ Jani was examined at Exh. 29 on behalf of the corporation. Thereafter, evidence was closed by both the parties before the tribunal. Thereafter, the tribunal examined the merits of the matter as discussed in para 6 of the award. After considering the entire evidence on record, the tribunal was of the view that the charge sheet, show cause notice and the punishment order and the suspension order were not signed by the commissioner and that is how, it is considered to be illegal. This Court is not examining the propriety of such findings given by the tribunal but considering the merits itself, an employee who has completed more than 20 years service and there was nothing adverse against him but because of the puncture in the tyre of his bicycle, he was late by one and half hour in resuming the duties in the office at the relevant time. Considering this as a serious matter, immediate serious action has been taken by the petitioner corporation without taking into consideration the compelling circumstances and at the first instance, the workman was placed under suspension and thereafter, charge sheet was served upon him and thereafter departmental inquiry was conducted against him and impugned order of punishment was passed by the petitioner corporation. The tribunal has discussed the entire evidence on record and has also taken into consideration the evidence led in the departmental inquiry and after appreciating the evidence before it as well as the evidence led in the departmental inquiry, it came to the conclusion that the departmental inquiry initiated against the respondent is not legal and valid by holding that the charge levelled against the workman has not been found to have been proved as no reason has been given by the authority as to how the charge has been established against the respondent. The tribunal was of the view that once the inquiry itself has been held to be illegal, the order passed at the end of such an illegal inquiry is required to be quashed and set aside and therefore, the tribunal has quashed and set aside the order of punishment.

I have perused the entire award made by the

tribunal. I am of the opinion that as per section 11A of the ID Act, 1947, tribunal is empowered to appreciate the evidence on record as well as the evidence led in the departmental inquiry against the delinquent and can give its own findings replacing the findings given by the authority in the disciplinary proceedings against such delinquent. According to my opinion, in exercise of the powers under section 11A of the ID Act, 1947, tribunal has appreciated the evidence on record as well as the evidence led in the departmental inquiry against the delinquent and has given its own findings replacing the findings given by the authority in the disciplinary proceedings against such delinquent. I am of the opinion that such findings given by the tribunal in exercise of such are the findings of fact given after appreciation of the evidence on record and Mr. J.R. Nanavaty has not been able to point out as to how the appreciation of the evidence on record was contrary to the facts on record. He has also not been able to point out as to how the exercise of the powers under section 11A of the ID Act, 1947 is illegal. I am of the opinion that in such circumstances, the tribunal was right in discussing the issue before it and was right in coming to the conclusion that the punishment itself is illegal and was right in setting aside such order of punishment. In view of that, it is not necessary to examine and consider the contention that mere communication by the subordinate officer would not render the show cause notice and order of punishment as well as show cause notice as illegal. Therefore, if the subordinate officer has signed in the communication, that itself is not considered to be illegal by this court. However, apart from that, the tribunal has given findings on merits and has come to the conclusion that the departmental inquiry is vitiated and the findings given by the departmental authority is also vitiated and has also come to the conclusion that the charge levelled against the workman has not been established against the respondent workman. These findings have been given by the tribunal after examining the merits of the matter and after considering the entire evidence before it and also the evidence led in the departmental inquiry against the respondent workman. Therefore, according to my opinion, the tribunal has rightly appreciated the evidence on record.The tribunal is having power under section 11-A of the ID Act, 1947 to reappreciate the oral and documentary evidence led in the departmental inquiry as well as the oral and documentary evidence produced before it. Thus, the tribunal is having such jurisdiction and powers as per sec.11A of the ID Act, 1947. This aspect has been examined by the Hon'ble Apex Court in the matter of WORKMEN OF FIRESTONE

TYRE AND RUBBER CO. OF INDIA P LTD V. THE MANAGEMENT AND OTHERSE reported in AIR 1973 page 1227. In para 37 of the said judgment, the Hon'ble Apex Court has made certain important and relevant observations as under:

"37. ..... That is why, according to us, section 11A now gives full power to the tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11A."

Therefore, in view of the above, the submission made by the learned advocate Mr. Nanavaty that the tribunal cannot reappreciate the evidence cannot be accepted. Said contention raised by the learned advocate Mr. Nanavaty is, therefore, rejected. Since this Court has considered the merits of the matter, this Court is not expressing any opinion about the alternative contentions raised by the learned advocate Mr. Y.V. Shah about the implementation of the award prior to the filing of this petition.

I have considered the reasoning given by the tribunal which are, according to my opinion, findings of fact given after appreciating the evidence led before it as well as the evidence led in the departmental inquiry against the respondent. This Court is having very limited jurisdiction under Article 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 227. Even insufficiency of evidence or that another view is

possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319. The relevant observations in para 4 & 5 are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V. Northumberland Compensation Appeal Tribunal, ex p Shaw [All ER at p.128] This Court in Chadavarkar Sita Ratna Rao v. Ashalata S. Guram held : [SCC pg.460, para 20]

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice [see Trimbak Gangadhar Telang]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indiction of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100. Relevant observations in para-12 are quoted as

under :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [vide State of U.P. v. District Judge, Unnao]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

Therefore, in view of these facts and considering the limited powers enjoyed by this court while exercising the powers under Article 227 of the Constitution of India, the petitioner corporation was not justified in imposing the punishment upon the employee who has become late by one and half hour because of the puncture in his bicycle and for which, necessary bill was also produced. Though the genuineness of the ground assigned by the workman was not doubted or suspected by the corporation, the corporation has at the same time not considered it properly while taking action against the workman for such a minor punishment and in view of that, the tribunal was justified in passing the award in question considering the compelling circumstances of the workman. Therefore, according to even merits also, the tribunal was right in passing the award in question which would not require any interference in this petition under Article 227 of the Constitution of India.

For the reasons recorded hereinabove, this petition is dismissed. Interim relief granted earlier shall stand vacated. Rule is discharged. There shall be

no order as to costs.

Dt.5.8.2003. (H.K. Rathod,J.)

Vyas